

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY D.L. TURNER,

Plaintiff,

v.

MICHAEL ULLERY, et al.,

Defendants.

No. 2:22-cv-0002 TLN CSK P

FINDINGS & RECOMMENDATIONS

Plaintiff is a county jail inmate proceeding pro se. On January 19, 2024, plaintiff filed a letter addressed to the Clerk, noting plaintiff's new address and his two purportedly active cases.¹ To the extent plaintiff seeks to reopen this case, it is recommended that such motion be denied without prejudice.

Relevant Background

This action was filed on December 23, 2021, while plaintiff was a state prisoner. On May 31, 2022, defendants Nougé, Ratton, and Ullery filed an answer. Plaintiff was granted leave to amend, and the case proceeded on the amended complaint filed November 28, 2022. (ECF No. 49, see also ECF No. 58 at 2.) On December 19, 2022, defendants Nougé and Ullery filed an answer to plaintiff's amended complaint.

¹ In addition to the instant case, which is closed, plaintiff refers to Turner v. Sacramento City Fire Dept., No. 2:19-cv-0416 TLN DB (E.D. Cal.), which was closed on November 15, 2023.

1 On February 23, 2023, plaintiff's first claim that Dr. Ratton and Dr. Ullery violated
2 plaintiff's Eighth Amendment rights by tapering plaintiff off amlodipine was dismissed, and Dr.
3 Ratton was dismissed from the action. (ECF No. 68.) On February 28, 2023, defendant Dr.
4 Surineni filed an answer. On March 7, 2023, a discovery and scheduling order issued. On March
5 10, 2023, plaintiff filed a notice of change of address, explaining that he had been released from
6 custody. (ECF No. 72.)

7 On July 5, 2023, defendants Nougé, Ullery and Surineni filed a motion for relief from
8 the scheduling order based on their failed efforts to schedule plaintiff's further deposition to
9 answer questions regarding his claims against defendant Surineni. On May 1, 2023, the parties
10 spoke by telephone and plaintiff agreed to be available for a June 23, 2023 further deposition,
11 although specific details for the deposition location and time were not provided at that time.
12 Subsequently, defendants' counsel tried to call plaintiff on three different days to confirm the date
13 and location of the deposition, but plaintiff's telephone numbers were disconnected, so such
14 efforts were unsuccessful. On June 16, 2023, defendants' counsel served plaintiff via overnight
15 courier a notice of deposition and mailed the notice to plaintiff's last known address reflected on
16 the court docket. Each day thereafter, defendants' counsel continued to attempt to reach plaintiff
17 by phone without success. Defendants' counsel also emailed plaintiff, one email of which
18 contained a copy of the deposition notice, but plaintiff did not confirm receipt or respond to the
19 emails. On June 22, 2023, defendants' counsel received notice that the deposition notice was
20 returned as undeliverable, with a note that the addressee had "Moved." (ECF No. 77 at 4.)
21 Counsel then canceled the deposition scheduled for June 23, 2022.

22 On July 6, 2023, the magistrate judge granted defendants' motion, vacated the discovery
23 and scheduling order, and directed plaintiff to file a change of address within thirty days. (ECF
24 No. 78.) The order was returned as undeliverable. On August 22, 2023, the magistrate judge
25 recommended that the action be dismissed. (ECF No. 79.) Plaintiff's copy of the findings and
26 recommendations was also returned as undeliverable. On September 29, 2023, the findings and
27 recommendations were adopted, the case was closed, and judgment was entered. (ECF No. 80.)
28 Plaintiff's copy of the order and judgment was also returned as undeliverable.

1 Governing Standards

2 Federal Rule of Civil Procedure 60(b) “allows a party to seek relief from final judgment,
3 and request reopening of his case, under a limited set of circumstances.” Gonzalez v. Crosby,
4 545 U.S. 524, 528 (2005). Such relief may be based on:

5 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
6 discovered evidence that, with reasonable diligence, could not have
7 been discovered in time to move for a new trial under Rule 59(b);
8 (3) fraud (whether previously called intrinsic or extrinsic),
9 misrepresentation, or misconduct by an opposing party; (4) the
judgment is void; (5) the judgment has been satisfied, released or
discharged; it is based on an earlier judgment that has been reversed
or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

10 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time -- and
11 for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the
12 date of the proceeding. Fed. R. Civ. P. 60(c)(1). “Rule 60(b) reconsideration is generally
13 appropriate in three instances: (1) when there has been an intervening change of controlling law,
14 (2) new evidence has come to light, or (3) when necessary to correct a clear error or prevent
15 manifest injustice.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D.
16 Cal. 2001) (citation omitted).

17 Discussion

18 Plaintiff fails to identify any factor under Rule 60(b) that would entitle him to reopen this
19 action. Plaintiff claims he has been in jail since August 17, 2023. (ECF No. 82 at 1.) But his
20 failure to communicate with defendants’ counsel concerning plaintiff’s deposition took place in
21 June of 2023, prior to his subsequent arrest. Moreover, plaintiff did not file a change of address.
22 Under Local Rule 182(f), pro se litigants are required to notify the court and all other parties of
23 any change of address or telephone number. Id. The record confirms that plaintiff is aware of his
24 obligation to notify the court of any change of address because he has filed several in the past.
25 (ECF Nos. 31, 57, 59, 72.)

26 Plaintiff also claims he came out of his “incompetence as of December of 2023 or January
27 6, 2024.” (Id.) But such statement is too vague and conclusory to demonstrate plaintiff is entitled
28 to relief. Plaintiff does not set forth specific dates as to any alleged incompetence, or explain how

1 such alleged incompetence was determined. Further, plaintiff provides no evidence showing that
2 any alleged mental illness prevented him from contacting defendants' counsel in June of 2023 or
3 timely notifying the court of his current address. Indeed, the undersigned finds plaintiff's one
4 page letter to the Clerk insufficient to support a motion for relief under Rule 60(b), as well as
5 insufficient to put defendants on notice of such requested relief.

6 Accordingly, liberally construing plaintiff's January 19, 2024 filing as a motion to reopen
7 the instant action, IT IS HEREBY RECOMMENDED that plaintiff's motion (ECF No. 82) be
8 denied without prejudice.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
14 failure to file objections within the specified time may waive the right to appeal the District
15 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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17 Dated: April 19, 2024

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19 CHI SOO KIM
20 UNITED STATES MAGISTRATE JUDGE

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